

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2019 JUL 10 P 7:02

UNITED STATES OF AMERICA,
Plaintiff,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation;
JOSE BENITEZ, as President and
Treasurer of Safehouse,

Defendants.

Civ.A. No. 2:19-cv-00519
REC'D CLERK

SAFEHOUSE, a Pennsylvania nonprofit corporation,
Counterclaim Plaintiff,

v.

UNITED STATES OF AMERICA,
Counterclaim Defendant,

and

U.S. DEPARTMENT OF JUSTICE; WILLIAM P.
BARR, in his official capacity as Attorney General of
the United States; WILLIAM M. MCSWAIN, in his
official capacity as U.S. Attorney for the Eastern District
of Pennsylvania,

Third-Party Defendants.

**PHILADELPHIA MAYOR JIM KENNEY AND HEALTH COMMISSIONER DR.
THOMAS FARLEY'S MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE**

The Honorable Jim Kenney, Mayor of the City of Philadelphia, and Dr. Thomas Farley, Philadelphia Health Commissioner, respectfully move this Court for leave to file the attached proposed brief as amici curiae.

Mayor Kenney is the mayor of the City of Philadelphia, where Safehouse proposes to open its overdose prevention site. Dr. Farley is the Philadelphia Health Commissioner and heads

the Department of Public Health, the agency tasked with studying and implementing health policy for the City and responding to public health emergencies.

As explained in more detail in the accompanying Memorandum of Law, we respectfully suggest that our amicus brief would be informative as to the important governmental and policy interests at stake in this case. Our amicus brief also highlights some of the research supporting the use of overdose prevention sites as a legitimate harm-reduction effort. These matters are relevant to the Court's decision whether Congress, in enacting the Controlled Substances Act, 21 U.S.C. § 856, had any intention of prohibiting life-saving medical interventions like an overdose prevention site.

In addition, as required by the Court's May 28, 2019 scheduling order, Mayor Kenney and Commissioner Farley state as follows:

- a. All parties consent to this filing;
- b. No counsel for any party to this litigation has authored the attached amicus brief, in whole or in part;
- c. No party to this litigation or its counsel has contributed money to fund preparing or submitting this brief; and
- d. No other person or entity other than the amici curiae has contributed money that was intended to fund preparing or submitting the brief.

Therefore, for the reasons stated above and in the accompanying Memorandum of Law, we respectfully request that the Court grant our motion for leave to file the attached amicus brief.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPT.
MARCEL PRATT, CITY SOLICITOR

/s/ Jennifer MacNaughton

By: Jennifer MacNaughton, Esq.

Attorney I.D. PA 88424

Senior Attorney, Appeals

City of Philadelphia Law Department

1515 Arch Street, 17th Floor

Philadelphia, PA 19102-1595

Tel (215) 683-3561

Fax (215) 683-5296

jennifer.macnaughton@phila.gov

*Attorneys for Amici Curiae Mayor Jim Kenney and Health
Commissioner Dr. Thomas Farley*

Dated: July 10, 2019

CERTIFICATE OF SERVICE

I, Jennifer MacNaughton, certify that on this day, I served the foregoing, Philadelphia Mayor Jim Kenney and Health Commissioner Dr. Thomas Farley's Motion for Leave to File Brief as Amici Curiae and accompanying Memorandum of Law, via email on counsel for all parties.

Date: July 10, 2019

/s/ Jennifer MacNaughton

Jennifer MacNaughton
City of Philadelphia Law Department

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation;
JOSE BENITEZ, as President and
Treasurer of Safehouse,

Defendants.

Civ.A. No. 2:19-cv-00519

SAFEHOUSE, a Pennsylvania nonprofit corporation,

Counterclaim Plaintiff,

v.

UNITED STATES OF AMERICA,

Counterclaim Defendant,

and

U.S. DEPARTMENT OF JUSTICE; WILLIAM P.
BARR, in his official capacity as Attorney General of
the United States; WILLIAM M. MCSWAIN, in his
official capacity as U.S. Attorney for the Eastern District
of Pennsylvania,

Third-Party Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF PHILADELPHIA MAYOR JIM KENNEY
AND HEALTH COMMISSIONER DR. THOMAS FARLEY'S MOTION FOR LEAVE
TO FILE BRIEF AS AMICI CURIAE**

Jim Kenney, Mayor of the City of Philadelphia, and Dr. Thomas Farley, Philadelphia Health Commissioner, respectfully move for leave to file a brief as amici curiae.

This case tests the legality of a much-needed new tactic in the fight against the opioid crisis. Over 1,000 of our citizens are killed by overdose every year. Responding to overdoses has strained the City's public health resources and imposed untold emotional harm on family and friends of opioid users, first responders, health care professionals, and even ordinary citizens

unexpectedly faced with individuals dying of overdoses before their eyes. And although the Kenney administration has launched a massive, coordinated effort to combat this crisis from multiple policy angles, we have achieved only a modest reduction in the death toll.

Mayor Kenney and Commissioner Farley’s perspective will assist the Court to appreciate the monumental scope of this crisis, Safehouse’s tremendous life-saving potential, and how an overdose prevention site – a legitimate medical intervention backed by the American Medical Association and voluminous public health research – is nothing like the criminal enterprises that the Controlled Substances Act, 21 U.S.C. § 856, was intended to fight. Faced with spiraling response costs and an unacceptable death toll, our City critically needs overdose prevention sites as another tool in our multi-pronged, evidence-based approach to fighting the opioid epidemic.

We respectfully ask the Court to grant leave to file the accompanying amicus brief.

I. The Court Has Broad Discretion to Accept an Amicus Curiae Brief

“District courts have broad discretion to appoint amicus curiae.” *Sciotto v. Marple Newtown Sch. Dist.*, 70 F.Supp.2d 553, 554 (E.D. Pa. 1999). Courts generally grant leave to file when the petitioner has a “special interest” in the case, its interest is not fully represented by the parties to the case, and the proffered information is timely and useful. *Liberty Res., Inc. v. Philadelphia Hous. Auth.*, 395 F.Supp.2d 206, 209 (E.D. Pa. 2005).¹ An amicus’s perspective can be especially valuable where the amicus “will ensure complete and plenary presentation of difficult issues so that the court may reach a proper decision ... or where an issue of general public interest is at stake.” *Id.* at 209-10 (citations and quotation marks omitted).

¹ *Liberty Resources* listed a fourth element, that the amicus is not partial to a particular outcome of the case, but the Third Circuit has criticized this notion of the impartial amicus as “outdated” and inconsistent with Rule 29’s requirement that the amicus have a “special interest” in the case. *Neonatology Associates, P.A. v. C.I.R.*, 293 F.3d 128, 131 (3d Cir. 2002).

II. Mayor Kenney and Commissioner Farley's Amicus Brief Would Assist the Court

We respectfully ask the Court to accept Mayor Kenney and Commissioner Farley's amicus brief because it expresses public and governmental interests not currently represented by the parties before the Court, and demonstrates why an overdose prevention site is a crucial component in Philadelphia's fight against the opioid crisis.

Mayor Kenney and Commissioner Farley have a special interest in this litigation because they serve the communities being ravaged by the opioid epidemic. Numerous City agencies serving under the Mayor (including the Department of Public Health, the Department of Behavioral Health, the Police Department, the Fire Department's medic units, and the Department of Human Services) are struggling to contain this crisis. Philadelphia is also where Safehouse intends to open its overdose prevention site.

Mayor Kenney and Commissioner Farley's interests are not fully represented by either Safehouse or the U.S. Attorney's Office. Although Safehouse shares our concern with saving the lives of people afflicted by substance abuse disorder, Mayor Kenney and Commissioner Farley can inform the Court of the wider challenges facing the City, and how the City is still struggling to contain this crisis despite launching a broad spectrum of prevention, law enforcement, and treatment initiatives. And while the U.S. Attorney's Office is concerned with enforcement of federal anti-drug laws, in this instance its interpretation of the Controlled Substances Act would deprive the City of one of the most effective life-saving tools available.

Lastly, we respectfully submit that our brief is helpful to the Court. The central issue in this case is whether 21 U.S.C. § 856 bars Safehouse's proposed overdose prevention site. The statute was intended to target the public nuisances generated by the illegal drug trade. It was not intended to squelch a legitimate public health intervention which will mitigate those very

nuisances. Mayor Kenney and Commissioner Farley's brief informs the Court of the true situation on the ground and how we expect Safehouse would actually support the statute's purpose.

CONCLUSION

Our proposed amicus brief offers a valuable perspective on the issue before the Court, one that is not represented by the parties to this case. We respectfully request that the Court grant our motion for leave to file.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPARTMENT
MARCEL PRATT, CITY SOLICITOR

/s/ Jennifer MacNaughton

By: Jennifer MacNaughton, Esq.

Attorney I.D. PA 88424

Senior Attorney, Appeals

City of Philadelphia Law Department

1515 Arch Street, 17th Floor

Philadelphia, PA 19102-1595

Tel (215) 683-3561

Fax (215) 683-5296

jennifer.macnaughton@phila.gov

*Attorneys for Amici Curiae Mayor Jim Kenney and
Philadelphia Health Commissioner Dr. Thomas Farley*

Dated: July 10, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation;
JOSE BENITEZ, as President and
Treasurer of Safehouse,

Defendants.

Civ.A. No. 2:19-cv-00519

SAFEHOUSE, a Pennsylvania nonprofit corporation,

Counterclaim Plaintiff,

v.

UNITED STATES OF AMERICA,

Counterclaim Defendant,

and

U.S. DEPARTMENT OF JUSTICE; WILLIAM P.
BARR, in his official capacity as Attorney General of
the United States; WILLIAM M. MCSWAIN, in his
official capacity as U.S. Attorney for the Eastern District
of Pennsylvania,

Third-Party Defendants.

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2019, upon consideration of the
Philadelphia Mayor Jim Kenney and Health Commissioner Dr. Thomas Farley's Motion for
Leave to File Brief as Amici Curiae, it is hereby ORDERED that the Motion is granted.

BY THE COURT:

, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation;
and

JOSE BENITEZ, as President and Treasurer of
Safehouse,

Defendants.

Civil Action No. 19-0519

SAFEHOUSE, a Pennsylvania nonprofit corporation,

Counterclaim Plaintiff,

v.

UNITED STATES OF AMERICA,

Counterclaim Defendant,

and

U.S. DEPARTMENT OF JUSTICE; WILLIAM P.
BARR, in his official capacity as Attorney General of
the United States; and

WILLIAM M. McSWAIN, in his official capacity as
U.S. Attorney for the Eastern District of Pennsylvania,

Third-Party Defendants.

**BRIEF OF AMICI CURIAE MAYOR JIM KENNEY AND HEALTH COMMISSIONER
DR. THOMAS FARLEY**

Dated: July 10, 2019

CITY OF PHILADELPHIA LAW DEPARTMENT
MARCEL S. PRATT, CITY SOLICITOR

/s/ Jennifer MacNaughton

By: Jennifer MacNaughton, Esq.

Attorney I.D. PA 88424

Senior Attorney, Appeals

City of Philadelphia Law Department

1515 Arch Street, 17th Floor

Philadelphia, PA 19102-1595

Tel (215) 683-3561

Fax (215) 683-5296

jennifer.macnaughton@phila.gov

*Attorneys for Amici Curiae Mayor Jim Kenney and
Philadelphia Health Commissioner Dr. Thomas Farley*

TABLE OF CONTENTS

I.	INTEREST OF AMICI CURIAE	1
II.	ARGUMENT	2
A.	Philadelphia, Which Has Been Especially Hard-Hit by the Opioid Epidemic, Must Consider Every Possible Option to Reduce our Unacceptably High Overdose Death Toll and Mitigate the Destructive Effects of this Crisis	2
B.	Research Supports Mayor Kenney and Commissioner Farley’s Prediction that Safehouse Will Save Lives, Connect People with Treatment, Reduce Health Problems Associated with Injection Drug Use, Reduce Public Disorder, and Save Millions of Dollars in Public Funds.....	7
1.	Having Medical Staff Ready to Intervene to Reverse Overdoses Will Save Lives ...	7
2.	Safehouse Will Help Fight Opioid Addiction by Acting as a Gateway to Recovery.	8
3.	Safehouse Will Have A Positive Effect on its Neighborhood by Reducing Public Injecting and Improper Syringe Disposal	9
4.	Safehouse will yield concrete benefits by saving lives, preventing infections disease transmission, and saving health care and EMT costs for responding to overdoses..	10
C.	Cooperating with an Overdose Prevention Site Like Safehouse Is an Important Element of the City’s Strategy for Fighting the Opioid Crisis, and the Federal Government Should Not Handicap the City and Safehouse’s Efforts.....	11
1.	The City is Doing Everything it Can to Stem this Crisis, but We Are Still Losing Over 1,000 Lives Every Year to Overdoses.....	11
2.	The Kenney Administration, Including the Departments of Health and Behavioral Health, Have Thoroughly Investigated this Option and Are Firmly Committed to Working with an Overdose Prevention Site	15
3.	The City is Duty-Bound to Pursue Every Possible Solution to Save its Citizens’ Lives and Alleviate the Damage Wrought by the Opioid Crisis	18
III.	CONCLUSION.....	18

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Gonzales v. Oregon</i> , 546 U.S. 243 (2006)	18
REGULATIONS	
City of Phila., Executive Order No. 3-18 (Oct. 3, 2018)	13
Phila. Bd. of Health, Resolution in Support of Operation of Overdose Prevention Facilities in Philadelphia, approved July 9, 2019	16
HOME RULE CHARTER AND ORDINANCES	
PHILA. CODE § 6-101	18
PHILA. CODE § 6-204	18
PHILA. CODE § 6-205	18
PHILA. CODE § 6-206	18
OTHER AUTHORITIES	
American Medical Association Press Release: AMA wants new approaches to combat synthetic and injectable drugs (June 17, 2017)	1
Blumgart, Jake, <i>7 takeaways from Mayor Jim Kenney's \$5 billion spending plan</i> , PlanPhilly (Mar. 7, 2019)	15
Bond, Allison, <i>Why fentanyl is deadlier than heroin, in a single photo</i> , STAT (Sept. 29, 2016)	4
Burdo, Allison, <i>Philly Police Arrest 60 in City Drug Sweep</i> , NBC10 (Apr. 3, 2015)	15
CHART, Phila. Dep't of Pub. Health, Vol. 4 No. 3 (May 2019)	2, 4, 14
CHART, Phila. Dept. of Public Health, Vol. 3 No. 1 (April 2018)	14
City of Philadelphia Press Release, <i>City Announces Police-Assisted Diversion (PAD) to Fight Opioid Epidemic</i> (Mar. 16, 2018)	13

DeBeck, Kora et al., <i>Injection drug use cessation and use of North America's first medically supervised safer injecting facility</i> , 113 Drug & Alcohol Dependence 176 (2010).....	8
Eichel, Larry, <i>Philadelphia's Rising Overdose Deaths Highlight Opioid Crisis</i> , Pew Charitable Trusts (Apr. 19, 2018).....	2
Final Report & Recommendations, Mayor's Task Force to Combat the Opioid Epidemic in Philadelphia, (May 19, 2017).....	passim
Gaul, Jerry, <i>Philly police: 176 arrested, more than \$250K in narcotics seized in massive drug sting</i> , Philly Voice (Dec. 20, 2016)	15
<i>How Fentanyl Changes the Opioid Equation</i> , Pew Charitable Trusts (Oct. 17, 2018).....	4
Insite User Statistics, Vancouver Coastal Health, www.vch.ca/public-health/harm-reduction/supervised-consumption-sites/insite-user-statistics	7
Kerr, Thomas et al., <i>Circumstances of First Injection Among Illicit Drug Users Accessing a Medically Supervised Safer Injection Facility</i> , 97 Am. J. Public Health 1228 (2007).....	9
Kerr, Thomas et al., <i>Impact of a medically supervised safer injection facility on community drug use patterns: a before and after study</i> , 332 BMJ 220 (2006).....	9
Kral, Alex. H. & Davidson, Peter J., <i>Addressing the Nation's Opioid Epidemic: Lessons from an Unsanctioned Supervised Injection Site in the U.S.</i> , 53 Am. J. of Preventive Med. 919 (December 2017)	7, 10
Larson, Sharon et al., <i>Supervised Consumption Facilities – Review of the Evidence</i> (Main Line Health Center for Population Health Research, December 2017).....	2, 10, 11
Lubrano, Alfred, <i>How Kensington got to be the center of Philly's opioid crisis</i> , Philadelphia Inquirer, Jan. 23, 2018.....	5
Milloy, Marshall et al., <i>Reduction in overdose mortality after the opening of North America's first medically supervised safer injecting facility: a retrospective population-based study</i> , 337 The Lancet 1429 (Apr. 18, 2011)	8
Pa. Att'y Gen., Press Release: Arrests 14, Seizes Heroin, Fentanyl, Cocaine, Guns in Largest Operation to Date (July 9, 2019)	14
Pa. Att'y Gen., Press Release: Attorney General Shapiro Announces Results of Major Drug Operation in Kensington, Pa. Office of the Attorney General (Feb. 14, 2019).....	14

Phila. Dep't of Pub. Health data, <i>available at</i> https://public.tableau.com/profile/pdph#!/vizhome/EDVisitsforUnintentionalOverdoses/EmergencyRoomVisits	3
Phila. Dep't of Pub. Health data, <i>available at</i> https://public.tableau.com/profile/pdph#!/vizhome/NaloxoneAdministrationsbyFirstResponders/NaloxoneAdminDashboard	3
Phila. Fire Dep't Fiscal Year 2019 Budget Testimony (May 1, 2018)	4
<i>Phila. Sentinel Community Site (SCS) Drug Use Patterns and Trends</i> , Nat'l Drug Early Warning Sys., Univ. of Md. Ctr. for Substance Abuse Rsrch., at 8 (Nov. 2018)	4
<i>Philadelphia 2019: The state of the city</i> , Pew Charitable Trusts (Apr. 11, 2019)	3
Potier, Chloé et al., <i>Supervised injection services: What has been demonstrated? A systematic literature review</i> , 145 <i>Drug & Alcohol Dependence</i> 48 (2014)	9, 10
Pub. Health Mgmt. Corp., <i>Findings from the Philadelphia Urban ACE Survey</i> (September 2013)	3
Simon, Darran, <i>The opioid epidemic is so bad that librarians are learning how to treat overdoses</i> , CNN (June 24, 2017)	6
Stuart, Meghan, <i>Fentanyl: 'The Police Can't Arrest Their Way Out of This': Where it's coming from, why it's so deadly, and what it will take to end the overdose crisis, according to a top Vancouver cop</i> , Vancouver Magazine (July 28, 2017)	17
U.S. Drug Enforcement Agency, <i>2018 Heroin Domestic Monitor Program</i>	3
Whelan, Aubrey, <i>Kensington heroin camps mainly populated by Philadelphians, study on evictions finds</i> , Philadelphia Inquirer, Mar. 12, 2019	6
Whelan, Aubrey, <i>The other victims of Kensington's opioid crisis: Children bearing witness</i> , Philadelphia Inquirer, Nov. 23, 2018	6
Wood, Evan et al., <i>Attendance at supervised injecting facilities and use of detoxification services</i> , 354 <i>N. Engl. J. Med.</i> 2512 (2006)	8
Wood, Evan et al., <i>Changes in public order after the opening of a medically supervised safer injecting facility for illicit injection drug users</i> , 171 <i>Can. Med. Ass'n J.</i> 731 (2004)	10
Wood, Evan et al., <i>Impact of a medically supervised safer injecting facility on drug dealing and other drug-related crime</i> , Substance Abuse Treatment, Prevention, & Policy, May 8, 2006	9

Wood, Evan et al., <i>Rate of detoxification service use and its impact among a cohort of supervised injecting facility users</i> , 102 <i>Addiction</i> 916 (2007)	8
---	---

I. INTEREST OF AMICI CURIAE

Jim Kenney is the mayor of Philadelphia, the city in which Safehouse intends to open one or more overdose prevention sites. Dr. Thomas Farley is the Commissioner of the Philadelphia Department of Public Health, the agency that tracks public health data, recommends and implements health policy for the City, and responds to public health emergencies.

While the opioid epidemic has afflicted cities and towns throughout the country, in Philadelphia the problem is more entrenched, and our death toll much higher, than nearly any other city in the nation. The Kenney Administration has made it a priority to mobilize a broad-reaching, coordinated response to this public health crisis.

Mayor Kenney and Commissioner Farley support Safehouse because decades of public health research have shown that overdose prevention sites save lives and reduce the harms associated with opioid use. This evidence is so strong that the American Medical Association has voted to endorse overdose prevention facilities.¹ Based on a track record of success in other countries, Mayor Kenney and Commissioner Farley expect that an overdose prevention site will save lives, reduce public injecting and unsafe syringe disposal, reduce blood-borne diseases and infections associated with injectable drug use, and connect people suffering from addiction with treatment, medical care, housing, and other support.

Safehouse is an important partner in the City's fight against the opioid crisis. Mayor Kenney and Commissioner Farley support an effort to open an overdose prevention site in Philadelphia, and would prioritize public safety and engaging members of the surrounding communities before it happens.

¹ American Medical Association Press Release: AMA wants new approaches to combat synthetic and injectable drugs (June 17, 2017), www.ama-assn.org/press-center/press-releases/ama-wants-new-approaches-combat-synthetic-and-injectable-drugs.

II. ARGUMENT

A. Philadelphia, Which Has Been Especially Hard-Hit by the Opioid Epidemic, Must Consider Every Possible Option to Reduce our Unacceptably High Overdose Death Toll and Mitigate the Destructive Effects of this Crisis

Our City is suffering through one the greatest public health emergencies in living memory. In 2018 alone, 1,116 lives were lost to drug overdoses, with the vast majority due to opioids.² This is nearly three times the death rate from homicides.³ It is more than the 935 people who died from AIDS in Philadelphia in 1994, at the height of that crisis.

The dramatic upswing in opioid use and overdoses is part of a national trend that began in the early 2000s. This new wave of opioid use was largely fueled by over-use of prescription opioids. Today, four out of five new heroin users started with prescription opioids.⁴

The problem is especially acute in Philadelphia. Our overdose death rate is disproportionately high compared to peer cities: in 2016, we had the third-highest death rate of all counties nationwide.⁵ This is several times higher than the death rates in other large cities such as Chicago and New York.⁶

² CHART, Phila. Dep't of Pub. Health, Vol. 4 No. 3 (May 2019), www.phila.gov/media/20190516102657/chart-v4e3-revise2.pdf.

³ CHART (May 2019), *supra* note 2.

⁴ Final Report & Recommendations, Mayor's Task Force to Combat the Opioid Epidemic in Philadelphia, at 6 (May 19, 2017), www.phila.gov/documents/opioid-task-force-report/.

⁵ Larry Eichel, *Philadelphia's Rising Overdose Deaths Highlight Opioid Crisis*, Pew Charitable Trusts (Apr. 19, 2018), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2018/04/philadelphias-rising-overdose-deaths-highlight-opioid-crisis>.

⁶ Mayor's Task Force Report, *supra* note 4, at 8; Sharon Larson et al., *Supervised Consumption Facilities – Review of the Evidence*, at 9 (Main Line Health Center for Population Health Research, December 2017), available at https://dbhids.org/wp-content/uploads/2018/01/OTF_LarsonS_PHLReportOnSCF_Dec2017.pdf.

And for every fatal overdose, there are many more, non-fatal overdoses. City first responders (emergency medical services, police, and public transit employees) administered naloxone nearly 4,500 times in 2018 alone.⁷ That same year, 8,482 people were seen in City hospital emergency rooms for non-fatal overdoses – over seven times the rate of fatal overdoses.⁸

A confluence of factors has made our City especially vulnerable. As the poorest big city in the nation,⁹ a disproportionate number of our citizens have faced poverty and trauma, factors that increase the likelihood of substance abuse.¹⁰ Additionally, Philadelphia has the dubious distinction of being home to the purest, cheapest heroin in the nation.¹¹ This makes heroin an attractive substitute for prescription opioids, which are more expensive and harder to obtain.¹²

Today, it is estimated that at least 70,000 Philadelphians use heroin, though the real figure is probably much higher.¹³ In one year from 2015 to 2016, Philadelphia's publicly-funded

⁷ Phila. Dep't of Pub. Health data, *available at* <https://public.tableau.com/profile/pdph#!/vizhome/NaloxoneAdministrationsbyFirstResponders/NaloxoneAdminDashboard>.

⁸ Phila. Dep't of Pub. Health data, *available at* <https://public.tableau.com/profile/pdph#!/vizhome/EDVisitsforUnintentionalOverdoses/EmergencyRoomVisits>.

⁹ In 2017, Philadelphia's poverty rate of 25.7% was the highest among the top 10 largest cities, and third-highest of all cities overall. *Philadelphia 2019: The state of the city*, fig. 9.2, Pew Charitable Trusts (Apr. 11, 2019), www.pewtrusts.org/en/research-and-analysis/reports/2019/04/11/philadelphia-2019.

¹⁰ See Pub. Health Mgmt. Corp., *Findings from the Philadelphia Urban ACE Survey*, at 9 (Table 3), 11 (Table 6), 22-23 (September 2013), www.instituteforsafefamilies.org/sites/default/files/isfFiles/Philadelphia%20Urban%20ACE%20Report%202013.pdf.

¹¹ U.S. Drug Enforcement Agency, *2018 Heroin Domestic Monitor Program*, at 24, www.dea.gov/sites/default/files/2018-10/Heroin%20Domestic%20Monitor%20Report%20DEA-GOV%20FINAL.pdf.

¹² Mayor's Task Force Report, *supra* note 4, at 6.

¹³ Mayor's Task Force Report, *supra* note 4, at 7.

health system treated approximately 14,000 people for opioid use disorder.¹⁴ This figure does not include people who sought treatment outside of the City's public health system.

Fentanyl abuse has also struck our City especially hard. Fentanyl is a powerful synthetic opioid that is cheaply and easily manufactured in overseas laboratories and typically shipped to dealers in the U.S. Its prevalence spiked beginning around 2013, as dealers started using it as a cheap additive to increase their products' potency.¹⁵ A lethal dose of fentanyl is three milligrams, and it kills within minutes.¹⁶ By comparison, the average EMS response time in Philadelphia is approximately eight and a half minutes.¹⁷

The death toll from fentanyl in Philadelphia has soared, from only a handful of deaths in 2013 to approximately 800 in 2018.¹⁸ That is 84% of all opioid-related overdose deaths.¹⁹ The rate of fentanyl adulteration detected in drug samples in Philadelphia is several magnitudes higher than the national average.²⁰

¹⁴ Mayor's Task Force Report, *supra* note 4, at 8.

¹⁵ *How Fentanyl Changes the Opioid Equation*, Pew Charitable Trusts (Oct. 17, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/10/17/how-fentanyl-changes-the-opioid-equation>.

¹⁶ Allison Bond, *Why fentanyl is deadlier than heroin, in a single photo*, STAT (Sept. 29, 2016), <https://www.statnews.com/2016/09/29/why-fentanyl-is-deadlier-than-heroin/>.

¹⁷ Phila. Fire Dep't Fiscal Year 2019 Budget Testimony (May 1, 2018), http://phlcouncil.com/wp-content/uploads/2018/04/FY19-Testimony_Fire_submitted-to-Council-4.27.pdf.

¹⁸ CHART (May 2019), *supra* note 2.

¹⁹ CHART (May 2019), *supra* note 2.

²⁰ *Phila. Sentinel Community Site (SCS) Drug Use Patterns and Trends*, Nat'l Drug Early Warning Sys., Univ. of Md. Ctr. for Substance Abuse Rsrch., at 8 (Nov. 2018), <https://ndews.umd.edu/sites/ndews.umd.edu/files/SCS-Report-2018-Philadelphia-FINAL-121718.pdf>.

Opioid abuse and overdose fracture families and communities. Families that lose a parent or child to overdose are left to cope with the grief and loss, compounded by the stigma of drug use. Addiction introduces a harmful dynamic in families, straining relationships and putting children at increased risk of abuse or neglect.

Especially tragic is the sharp rise in neonatal abstinence syndrome (NAS) in babies born to mothers who used opioids while pregnant. In Philadelphia, the rate of NAS has tripled since 2002, reaching 11 per 1,000 live births in 2015.²¹ These babies suffer through withdrawal symptoms and are at increased risk for mental or behavioral issues later in life.

Opioids have devastated entire neighborhoods, burdening neighbors and businesses with increased street crime, discarded needles, homelessness, and public drug use. Kensington is perhaps the most emblematic example of the social costs of opioid use. Once a thriving working-class neighborhood, Kensington's fortunes declined in the latter half of the twentieth century as manufacturing jobs left the City.²² Eventually the corner of Kensington Avenue and Somerset Street grew to become the infamous epicenter of the drug trade in Philadelphia.²³ It was common to see drug dealing, prostitution, and drug use occurring out in the open and seemingly beyond the authorities' control.²⁴ Until recently, several enormous homeless encampments had taken

²¹ Mayor's Task Force Report, *supra* note 4, at 10.

²² See Alfred Lubrano, *How Kensington got to be the center of Philly's opioid crisis*, Philadelphia Inquirer, Jan. 23, 2018, <https://www.inquirer.com/philly/news/kensington-opioid-crisis-history-philly-heroin-20180123.html>.

²³ *Id.*

²⁴ *Id.*

over stretches of vacant land.²⁵ Neighbors have felt under siege, with children often walking to school on streets littered with discarded needles, and residents finding people passed out or even overdosing in front of their homes and businesses.²⁶

Overdoses have also put added strain on our first responders. Our EMS personnel already report high psychological stress and burnout due to the pressures of a very busy EMS system. Responding to preventable overdose calls is an added – and unnecessary – burden.

Even ordinary people far removed from health care occupations have been drafted into fighting this epidemic. At McPherson Library in Kensington, librarians have taken on the role of first responders to overdoses.²⁷ Library staff have received training on how to recognize overdoses and administer naloxone. They call upon that training regularly: one librarian profiled in an article on CNN had reversed six overdoses in just a few months.²⁸ Similarly, fast food restaurant and convenience store managers and workers have increasingly sought out the City's naloxone distributions and training in response to patrons overdosing in bathrooms.

Opioids are one of greatest public health disasters this City has ever faced. They are killing Philadelphians in record numbers, devastating families and entire neighborhoods, and

²⁵ Aubrey Whelan, *Kensington heroin camps mainly populated by Philadelphians, study on evictions finds*, Philadelphia Inquirer, Mar. 12, 2019, www.inquirer.com/health/kensington-homeless-encampments-cleared-drugs-opioid-crisis-study-philadelphia-20190312.html.

²⁶ Aubrey Whelan, *The other victims of Kensington's opioid crisis: Children bearing witness*, Philadelphia Inquirer, Nov. 23, 2018, <https://www.inquirer.com/philly/health/addiction/kensington-opioid-crisis-children-schools-20181123.html>.

²⁷ Darran Simon, *The opioid epidemic is so bad that librarians are learning how to treat overdoses*, CNN, June 24, 2017, <https://www.cnn.com/2017/06/23/health/opioid-overdose-library-narcan/index.html>.

²⁸ *Id.*

overwhelming our health care, social services, child welfare, and law enforcement agencies. The City needs every possible resource to fight this epidemic.

B. Research Supports Mayor Kenney and Commissioner Farley's Prediction that Safehouse Will Save Lives, Connect People with Treatment, Reduce Health Problems Associated with Injection Drug Use, Reduce Public Disorder, and Save Millions of Dollars in Public Funds

The evidence shows that overdose prevention sites work. There are approximately 100 such facilities now operating in 11 different countries, primarily in Europe, plus Australia and Canada. The first location in North America was Insite in Vancouver, Canada, which opened in 2003. Facilities have recently opened in Montreal and Toronto. And a small, unsanctioned overdose prevention center has been secretly operating in an unnamed U.S. city since 2014.²⁹ Decades of experience and research have now shown that these facilities' impact is overwhelmingly positive: they save lives, help people who use opioids to access treatment, and have other harm-reduction benefits for clients and communities.

1. Safehouse Will Prevent Overdose Deaths

Safehouse's life-saving potential is obvious: clients stand a much better chance of surviving an overdose if they are being monitored by staff trained to recognize and reverse overdoses, rather than using on the street or in a hidden location. For Insite, from its inception through 2017 it served over 3.6 million clients and intervened in 6,440 overdoses, with not a single overdose death.³⁰ During its first two years of its operation, overdose deaths in the surrounding neighborhood decreased by 35 percent.³¹

²⁹ Alex H. Kral & Peter J. Davidson, *Addressing the Nation's Opioid Epidemic: Lessons from an Unsanctioned Supervised Injection Site in the U.S.*, 53 Am. J. of Preventive Med. 919 (December 2017), available at [https://www.ajpmonline.org/article/S0749-3797\(17\)30316-1/fulltext](https://www.ajpmonline.org/article/S0749-3797(17)30316-1/fulltext).

³⁰ Insite User Statistics, Vancouver Coastal Health, www.vch.ca/public-health/harm-reduction/supervised-consumption-sites/insite-user-statistics.

2. Safehouse Will Help Fight Opioid Addiction by Acting as a Gateway to Recovery

The City expects that Safehouse will help some people escape the cycle of addiction because it can connect clients with treatment options at the critical moment when clients are ready to accept treatment. Clinical providers understand the importance of treatment on demand, and having immediate access when a person suffering from addiction seeks treatment is critical to their process toward recovery.

Here again, Insite's history speaks volumes. Several independent studies have found that Insite clients are more likely to access treatment.³² One study found that in the year after Insite opened, use of Insite was associated with a 30% increase in detoxification service use.³³ Another study of repeat Insite clients found more frequent visitors were *more* likely to seek treatment: 46% of individuals with three or more visits went on to access addiction treatment.³⁴ Insite's experience shows that an overdose prevention facility in Philadelphia will save even more lives by referring people with active addiction to treatment.

³¹ Marshall, Milloy, et al., *Reduction in overdose mortality after the opening of North America's first medically supervised safer injecting facility: a retrospective population-based study*, 337 *The Lancet* 1429 (Apr. 18, 2011), available at <http://www.communityinsite.ca/injfacility.pdf>.

³² E.g. Kora DeBeck et al., *Injection drug use cessation and use of North America's first medically supervised safer injecting facility*, 113 *Drug & Alcohol Dependence* 176 (2010), available at https://www.researchgate.net/publication/46035296_Injection_drug_use_cessation_and_use_of_North_America's_first_medically_supervised_safer_injecting_facility; Evan Wood et al., *Rate of detoxification service use and its impact among a cohort of supervised injecting facility users*, 102 *Addiction* 916 (2007), available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.141.7689&rep=rep1&type=pdf>.

³³ Wood et al. (2007), *supra* note 32.

³⁴ Evan Wood et al., *Attendance at supervised injecting facilities and use of detoxification services*, 354 *N. Engl. J. Med.* 2512 (2006), available at <https://static1.squarespace.com/static/596f8b1ca803bb496e345ac8/t/5998f7a6e45a7ccab71eda17/1503197094881/nejmc052939.pdf>.

3. Safehouse Will Have A Positive Effect on its Neighborhood by Reducing Public Injecting and Improper Syringe Disposal

Despite skeptics' fears, there is no evidence that overdose prevention sites encourage drug use. These facilities typically serve people who have been suffering from addiction for many years, who inject drugs multiple times per day, and who recognize the risks of overdose that they are taking. In a survey of 1065 Insite clients, researchers found that the clients had been injecting drugs for a median of 15.9 years, but only one of those clients reported their first injection drug use was at the facility.³⁵ Another study comparing data before and after Insite opened found no increase in the relapse rate among Vancouver injection drug users.³⁶

And while it is understandable why some have expressed concern that an overdose prevention site would bring more crime and disorder to the neighborhood, these concerns are not borne out by experience. Research on overdose prevention sites across the globe has found no effect on drug dealing or other crime in the surrounding neighborhoods.³⁷

³⁵ Thomas Kerr et al., *Circumstances of First Injection Among Illicit Drug Users Accessing a Medically Supervised Safer Injection Facility*, 97 Am. J. Public Health 1228 (2007), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1913080/>.

³⁶ Thomas Kerr et al., *Impact of a medically supervised safer injection facility on community drug use patterns: a before and after study*, 332 BMJ 220 (2006), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1352057/pdf/bmj33200220.pdf>.

³⁷ Evan Wood et al., *Impact of a medically supervised safer injecting facility on drug dealing and other drug-related crime*, Substance Abuse Treatment, Prevention, & Policy, at 13 (May 8, 2006), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1471778/>; Chloé Potier et al., *Supervised injection services: What has been demonstrated? A systematic literature review*, 145 Drug & Alcohol Dependence 48 (2014), available at <https://www.mass.gov/files/documents/2019/01/29/Supervised%20injection%20services%20-%20What%20has%20been%20demonstrated%20%282014%29.pdf>.

In fact, overdose prevention sites tend to have a *positive* effect on the surrounding neighborhood, by markedly reducing public injecting and improper syringe disposal.³⁸ A survey of clients using the unsanctioned overdose prevention site in the U.S. reported that over a two-year study period, 2,574 injections occurred there, more than 90% of which would have otherwise occurred in a public restroom, street, park, or parking lot.³⁹ The researchers also noted that all syringes used on the premises were disposed of properly.⁴⁰

4. Safehouse will yield concrete benefits by saving lives, preventing infections disease transmission, and saving health care and EMT costs for responding to overdoses

Public health specialists have already quantified how the benefits seen with other overdose prevention sites would play out in Philadelphia. Epidemiologists and public health specialists from the Main Line Health System and Thomas Jefferson University, funded by the Robert Wood Johnson Foundation, estimated the effects of an overdose prevention site in Philadelphia.⁴¹ They found that just a single site could:

- Save up to 76 lives per year;
- Prevent 1 to 18 new HIV infections and 15 to 213 new cases of hepatitis C annually;
- Reduce health care costs for skin and soft tissue injuries associated with injecting drugs by \$1.5 million to \$1.8 million annually; and

³⁸ Potier et al., *supra* note 37; Evan Wood et al., *Changes in public order after the opening of a medically supervised safer injecting facility for illicit injection drug users*, 171 Can. Med. Ass'n J. 731 (2004), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC517857/pdf/20040928s00024p731.pdf>.

³⁹ Kral & Davidson, *supra* note 29.

⁴⁰ Kral & Davidson, *supra* note 29.

⁴¹ Larson, *supra* note 6.

- Save \$123,776 each year on ambulance costs related to overdoses, \$280,683 yearly in emergency room costs, and \$247,971 yearly in reduced hospitalizations.⁴²

Safehouse will save lives, get more people suffering from the disease of addiction into treatment, reduce the neighborhood disorder that accompanies opioid use, and save millions of dollars in health care spending each year.

C. Cooperating with an Overdose Prevention Site Like Safehouse Is an Important Element of the City’s Strategy for Fighting the Opioid Crisis, and the Federal Government Should Not Handicap the City and Safehouse’s Efforts

Tackling the modern-day plague of opioid abuse has been one of the Kenney Administration’s most urgent priorities. In so doing, Mayor Kenney and Commissioner Farley have sought evidence-backed strategies that will yield results. Overdose prevention sites are an important piece of this approach. While the City has already launched a wide array of initiatives – including expanding treatment and outreach, making naloxone widely available, and strengthening our emergency overdose response processes – we have seen only a modest reduction in the death toll. We urge this Court to reject the federal government’s attempt to deprive the City of a proven life-saving tool.

1. The City is Doing Everything it Can to Stem this Crisis, but We Are Still Losing Over 1,000 Lives Every Year to Overdoses

Working with a privately-operated overdose prevention site is one facet – but a crucial one -- of the Kenney Administration’s comprehensive strategy to tackle the opioid crisis from all possible angles.

The initial framework for action was set out by the Mayor’s Task Force to Combat the Opioid Epidemic, a panel comprised of City officials and experts in public health, behavioral

⁴² Larson, *supra* note 6, at 7, 18 table 2.

health and addiction recovery, first responders, and corrections and law enforcement convened to recommend evidence-based measures to fight back against this crisis. A broad coalition of City agencies has begun implementing policies recommended by the Task Force, including:

- Extensive education to physicians and other medical providers to reduce the over-prescribing of pharmaceutical opioids;
- A public education campaign, “Don’t Take the Risk,” to educate consumers about the risks of prescription opioids;
- Expansion of access to medication-assisted treatment for opioid addiction, the “gold standard” form of drug treatment, in both traditional substance use treatment clinics and primary medical care clinics;
- A public education campaign, “Bupe Works”, to encourage persons who are addicted to opioids to begin medication-assisted treatment;
- Working with local emergency hospitals to initiate medication-assisted treatment for overdose survivors and carry out “warm handoffs” for them to drug treatment providers;
- Supporting a new 24/7 walk-in center where people can receive immediate access to medication-assisted treatment and referrals to longer-term treatment options;
- Distributing naloxone to EMTs, police, and family and friends of persons suffering from opioid addiction and training them on how to recognize and respond to overdoses;
- Establishing a specialized EMS unit, Alternative Response Unit 2, in which paramedics partner with social service case workers to respond to overdose calls and assist the victim in accessing addiction treatment;
- Installing sharps disposal containers along major roads and organizing massive street-cleaning operations in Kensington; and
- Humanely clearing four major homeless encampments in Kensington, with extensive outreach to connect residents with shelter, recovery services, and social services.⁴³

Even within the realm of law enforcement, the City has recognized an important role for harm-reduction measures. As a notable example, the Philadelphia Treatment Court identifies

⁴³ For a comprehensive overview of the City’s efforts to combat the opioid crisis, see www.phila.gov/programs/combating-the-opioid-epidemic/.

lower-level offenders with a substance use disorder and connects them with treatment as a supplement or alternative to incarceration. Over twenty years, this approach has yielded recidivism rates 6% to 26% lower than processing drug offenders through the traditional court system.⁴⁴ Similarly, the City has launched a police-assisted diversion (PAD) pilot project in the 22nd Police District, in which low-level offenders with a substance abuse problem are directed to drug treatment options as an alternative to incarceration.⁴⁵ And recently, in line with the Task Force's recommendation, the Philadelphia prison system has begun to make medication-assisted treatment (MAT) and withdrawal management more widely available to prisoners with opioid use disorder. Research shows that individuals who participate in MAT while incarcerated are more than twice as likely to engage in treatment upon their release from prison.⁴⁶

But despite considerable progress in implementing the Task Force's recommendations, it is clear that even more work is needed.⁴⁷ In October 2018, as overdose deaths continue to surge, Mayor Kenney signed an executive order creating the Opioid Emergency Response Group.⁴⁸ The executive order joined 35 City offices together for a coordinated response, addressing both the needs of the population using opioids and the harmful effects on neighborhoods at the epicenter of the drug trade.

⁴⁴ Mayor's Task Force Report, *supra* note 3, at 12.

⁴⁵ City of Philadelphia Press Release, *City Announces Police-Assisted Diversion (PAD) to Fight Opioid Epidemic* (Mar. 16, 2018), <https://www.phila.gov/2018-03-16-city-announces-police-assisted-diversion-pad-to-fight-opioid-epidemic/>.

⁴⁶ Mayor's Task Force Report, *supra* note 3, at 25.

⁴⁷ The Mayor's Commission on Addiction and Recovery is monitoring the City's progress on these recommendations. *See* www.phila.gov/documents/opioid-task-force-report/.

⁴⁸ *See* City of Phila., Executive Order No. 3-18 (Oct. 3, 2018), <https://www.phila.gov/ExecutiveOrders/Executive%20Orders/eo99318.pdf>.

It appears these and other preventive efforts have begun to bear fruit. After a steep, decade-long rise in the overdose rate, 2018 saw a modest decrease in the total overdose death toll: from an all-time high of 1,217 deaths in 2017 to 1,116 deaths in 2018.⁴⁹ Nonetheless, the number of overdose deaths – *preventable* deaths – remains shockingly high.

Additionally, the Philadelphia Police Department, both alone and in cooperation with their state and federal law enforcement partners, has been aggressively targeting heroin and fentanyl traffickers, dealers, buyers, and “pill mills” that illegally prescribe opioids; nonetheless, the problem persists. For instance, the Kensington Initiative has united local, state, and federal law enforcement to conduct major investigations aimed at disrupting entire narcotics enterprises and international trafficking rings, with a central focus on activity in Philadelphia’s Kensington neighborhood.⁵⁰ Just yesterday, the Attorney General announced another major sting operation: with help from the PPD, agents arrested 14 individuals and seized 6 kilos of heroin/fentanyl plus other drugs, firearms, and cash, and broke up an organization that authorities believe used children to sell drugs on street corners.⁵¹ The PPD has also independently conducted well-publicized sweeps targeting both dealers and customers. In one instance, the police netted 60 arrests in a single day, posted the arrestees’ names and photographs online, and confiscated the

⁴⁹ CHART (May 2019), *supra* note 2; CHART, Phila. Dept. of Public Health, Vol. 3 No. 1 (April 2018), <https://www.phila.gov/media/20181106124514/chart-v3e1.pdf>.

⁵⁰ *E.g.* Pa. Att’y Gen., Press Release: Attorney General Shapiro Announces Results of Major Drug Operation in Kensington, Pa. Office of the Attorney General (Feb. 14, 2019), www.attorneygeneral.gov/taking-action/press-releases/attorney-general-shapiro-announces-results-of-major-drug-operation-in-kensington/.

⁵¹ Pa. Att’y Gen., Press Release: AG Shapiro: Kensington Initiative Arrests 14, Seizes Heroin, Fentanyl, Cocaine, Guns in Largest Operation to Date (July 9, 2019), www.attorneygeneral.gov/taking-action/press-releases/ag-shapiro-kensington-initiative-arrests-14-seizes-heroin-fentanyl-cocaine-guns-in-largest-operation-to-date/.

vehicles of dealers and buyers alike.⁵² A massive police operation in 2016 resulted in 176 arrests over the course of three days.⁵³ But the plain fact is, the threat of arrest does very little to deter someone already suffering from the disease of addiction. And despite the PPD and its partner law enforcement agencies' impressive victories – taking out scores of dealers at a time and disrupting entire criminal enterprises – there is no shortage of dealers and traffickers ready to take their place, and no shortage of heroin and fentanyl pouring into our City every day.

The Kenney Administration is committed to this fight for the long term. The Mayor's proposed 2019 budget included nearly \$36 million in funding over the next five years earmarked specifically for combating the opioid crisis.⁵⁴ It will take a massive investment of time and effort to turn the tide against the opioid epidemic. In our City's time of need, Safehouse is a key ally.

2. The Kenney Administration, Including the Departments of Public Health and Behavioral Health, Have Thoroughly Investigated this Option and Are Firmly Committed to Working with an Overdose Prevention Site

Of the many tactics available to fight the opioid crisis, overdose prevention sites are undoubtedly worth pursuing, because the evidence shows that they are one of the most effective solutions for saving lives.

⁵² Allison Burdo, *Philly Police Arrest 60 in City Drug Sweep*, NBC10 (Apr. 3, 2015), www.nbcphiladelphia.com/news/local/Philly-Police-Arrest-60-in-City-Drug-Sweep-298624621.html.

⁵³ Jerry Gaul, *Philly police: 176 arrested, more than \$250K in narcotics seized in massive drug sting*, Philly Voice (Dec. 20, 2016), www.phillyvoice.com/philly-police-176-arrested-more-than-250k-in-narcotics-seized-in-massive-drug-sting/.

⁵⁴ Jake Blumgart, *7 takeaways from Mayor Jim Kenney's \$5 billion spending plan*, PlanPhilly (Mar. 7, 2019), <http://planphilly.com/articles/2019/03/07/7-takeaways-from-mayor-jim-kenney-s-5-billion-spending-plan>.

In recognition of this fact, the Philadelphia Board of Health passed a Resolution in Support of Operation of Overdose Prevention Facilities in Philadelphia.⁵⁵ The Resolution notes that “Philadelphia is in the midst of an unprecedented drug overdose epidemic”, refers to the substantial body of public health research supporting overdose prevention sites, and sets for the Board’s finding that “overdose prevention facilities represent a broadly beneficial, evidence-based opportunity to meet people suffering from addiction where that addiction allows, by encouraging and facilitating treatment while providing harm reduction services.” These findings of a City regulatory body comprised of public health experts and directly responsible for public health in Philadelphia should carry substantial weight.

Exploring an overdose prevention site is an important policy recommendation put forward by the Mayor’s Task Force, which recommended a model (termed a “comprehensive user engagement site” in the Report) that would pair medically supervised consumption (including sterile injecting equipment, safe disposal, and overdose reversal) with wraparound services, including referral to addiction treatment.⁵⁶ Safehouse seeks to independently operate its overdose prevention site, with the City cooperating with Safehouse to ensure that social services and addiction treatment referrals are available to Safehouse’s clients.

To gather more information about this option, the City sent a group of top officials from the Police Department, Managing Director’s Office, Health Department, Behavioral Health Department, Fire Department, and other key departments to Vancouver to visit Insite and meet with Vancouver police to learn more about how Insite has worked in that community.

⁵⁵ Phila. Bd. of Health, Resolution in Support of Operation of Overdose Prevention Facilities in Philadelphia, approved July 9, 2019, www.phila.gov/media/20190710144627/BOH-Resolution-Overdose-Prevention-Facilities-Approved-July-9-2019.pdf

⁵⁶ Mayor’s Task Force Report, *supra* note 4, at 23.

The City has also met with community members and City officials to provide the facts about an overdose prevention site and hear from residents and local health care and outreach workers about their experience. In particular, the City hosted Staff Sergeant Bill Spearn, a top drug enforcement official with the Vancouver police department. As a beat cop, Sgt. Spearn worked the Downtown Eastside neighborhood, which is ground zero for that city's opioid crisis. At the time, Sgt. Spearn was firmly opposed to harm reduction measures. But after Insite opened, he witnessed a dramatic drop in the number of overdoses he and his fellow officers were called to deal with. His views changed: "I attribute that [improvement] to the harm-reduction initiatives that were brought in. They work. I've done a 180."⁵⁷

Additionally, the Department of Behavioral Health and Intellectual disAbility Services (DBHIDS), which coordinates mental health and addiction treatment for Philadelphians eligible for publicly-funded health care, has already begun laying the groundwork to connect Safehouse with peer recovery specialists, who will help Safehouse clients navigate our network of treatment providers. DBHIDS has found that peer specialists are the most effective way to connect this extremely hard-to-reach population with the treatment options available to them.

The City has extensively studied the feasibility of an overdose prevention facility to ensure that it will be beneficial to Philadelphia. Given the powerful public health evidence supporting overdose prevention sites and the magnitude of our opioid disaster, we need to move toward actual implementation.

⁵⁷ Meghan Stuart, *Fentanyl: 'The Police Can't Arrest Their Way Out of This': Where it's coming from, why it's so deadly, and what it will take to end the overdose crisis, according to a top Vancouver cop*, Vancouver Magazine (July 28, 2017), <http://vanmag.com/city/policing-fentanyl-vancouver/> (last accessed June 26, 2019).

3. The City is Duty-Bound to Pursue Every Possible Solution to Save its Citizens' Lives and Alleviate the Damage Wrought by the Opioid Crisis

In partnering with Safehouse, the Kenney Administration, including the Philadelphia Department of Public Health, is fulfilling its mandate to safeguard the public health and welfare and protect the lives of Philadelphians at risk of overdose. Responding to public health emergencies is traditionally the domain of local government. *See Gonzales v. Oregon*, 546 U.S. 243, 270 (2006). The Department of Public Health, led by the Health Commissioner, is charged with “the preservation and promotion of the health of the people of the City,” and is entrusted with “regulatory or police powers and duties” to carry out its mandate. PHILA. CODE § 6-101. These powers are substantial: for instance, in a public health emergency, the Department may quarantine individuals or forbid public assembly to prevent the spread of infectious disease. *See* PHILA. CODE §§ 6-204 to 6-206. Commissioner Farley’s decision to endorse an overdose prevention site is well within his mandate to respond to this public health emergency.

Although we sincerely respect and are grateful for federal law enforcement’s efforts to pursue drug dealers and intercept illegal drugs bound for our City, law enforcement alone cannot solve this crisis. The evidence overwhelmingly shows that overdose prevention sites work. We urge this Court to reject the federal government’s attempt to deprive us of one of the most effective weapons we have in our fight to save the lives of people affected by opioid addiction.

III. CONCLUSION

For the foregoing reasons, Philadelphia Mayor Jim Kenney and Health Commissioner Dr. Thomas Farley respectfully request that the Court deny the U.S. Attorney’s motion for judgment on the pleadings.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPARTMENT
MARCEL S. PRATT, CITY SOLICITOR

/s/ Jennifer MacNaughton

By: Jennifer MacNaughton, Esq.

Attorney I.D. PA 88424

Senior Attorney, Appeals

City of Philadelphia Law Department

1515 Arch Street, 17th Floor

Philadelphia, PA 19102-1595

Tel (215) 683-3561

Fax (215) 683-5296

jennifer.macnaughton@phila.gov

*Attorneys for Amici Curiae Mayor Jim Kenney and
Philadelphia Health Commissioner Dr. Thomas Farley*

Dated: July 10, 2019